

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTOLIN ANDREWS,

Plaintiff,

No. CIV S-03-1218 WBS PAN P

vs.

S. CERVANTES,

Defendant.

ORDER

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Plaintiff, proceeding pro se, filed this civil rights action while he was a California state prisoner, seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262. On December 2, 2004, acting on the Findings and Recommendations of the Magistrate Judge, this court denied plaintiff's request to proceed in forma pauperis, and on December 9, 2004, plaintiff appealed to the United States Court of Appeals for the Ninth Circuit from that order.

On February 23, 2005, plaintiff filed a Motion to Reopen this case, based on the Ninth Circuit's decision in Andrews v. King, 398 F.3d 1113 (9th Cir. 2005).<sup>1</sup> On May 27, 2005, the magistrate judge filed findings and recommendations, recommending that this court decline

<sup>1</sup> That case was an appeal from an order by Judge Burrell in a different case, dismissing another section 1983 action filed by plaintiff.

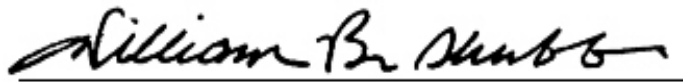
1 to entertain plaintiff's motion because his appeal from the matter which he seeks to reopen is still  
2 pending in the Court of Appeals. The findings and recommendations were served on plaintiff,  
3 and plaintiff has filed objections to the findings and recommendations, in which he  
4 acknowledges that his appeal has not been dismissed, but asks this court to "indicate whether it  
5 would rather entertain the motion rather than having the appeal go forward."

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-  
7 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire  
8 file, the court finds the findings and recommendations to be supported by the record and by  
9 proper analysis. The court will not issue advisory opinion on how it would rule if plaintiff's  
10 pending appeal is dismissed.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The findings and recommendations filed May 27, 2005, are adopted in full; and  
13 2. This court declines to entertain plaintiff's February 23, 2005, motion.

14 DATED: September 27, 2005

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16 WILLIAM B. SHUBB  
17 UNITED STATES DISTRICT JUDGE

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